

No. 11974

United States
Court of Appeals
for the Ninth Circuit

WALLACE RAYMOND SHAVER,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

NOV 1 - 1948

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Northern District of California,
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San Francisco, California,

Attorney for Plaintiff and Appellee.

In the Southern Division of the United States
District Court for the Northern District
of California

No. 31417R

Viol, Title 18 United States

Code, Section 409

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WALLACE RAYMOND SHAVER,

Defendant.

INDICTMENT

FIRST COUNT:

The Grand Jury charges: that

On or about the 30th day of October, 1947, at the City and County of San Francisco, State and Northern District of California, Wallace Raymond Shaver (hereinafter called "said defendant"), being an employee of a carrier, to-wit, Railway Express Agency, riding upon a motor truck of such carrier, transporting property in interstate commerce and having in his custody funds arising out of and accruing from such transportation, did embezzle and unlawfully convert to his own use, a portion of such funds, to-wit, the sum of \$73.29, which arose out of and accrued from an interstate

shipment of property from the City of Omaha, Nebraska, to and into the City and County of San Francisco, State of California. [1*]

SECOND COUNT:

The Grand Jury further charges: that

On or about the 4th day of September, 1947, at the City and County of San Francisco, State and Northern District of California, the said defendant, being an employee of a carrier, to-wit, Railway Express Agency, riding upon a motor truck of such carrier, transporting property in interstate commerce and having in his custody funds arising out of and accruing from such transportation, did embezzle and unlawfully convert to his own use, a portion of such funds, to-wit, the sum of \$18.25, which arose out of and accrued from an interstate shipment of property from LaGrange, State of Illinois, to and into the City and County of San Francisco, State of California.

A True Bill.

ARTHUR C. GRIFFIN,
Foreman, Deputy.

/s/ FRANK J. HENNESSY,
United States Attorney.

(Approved as to Form: R. B. McM).

[Endorsed]: Presented in open court and ordered filed May 12, 1948. [2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

District Court of the United States, Northern
District of California, Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 13th day of May, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ARRAIGNMENT

In this case the defendant, Wallace Raymond Shaver, was present in the custody of the United States Marshal and with his attorney, James Davis, Esq. Daniel C. Deasy, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Deasy, the defendant was called for arraignment. The defendant was informed as to the return of the Indictment by the United States Grand Jury, and asked if he was the person named therein, and upon his answer that he was and that his true name was Wallace Raymond Shaver, thereupon Mr. Davis waived the reading of the Indictment. Copy of Indictment was handed to the defendant, who stated that he understood the charge against him.

On motion of Mr. Davis and with consent of Mr. Deasy, it is ordered that the amount of bail for release of defendant be reduced from \$1000.00 to \$500.00.

Ordered that this case be continued to May 20, 1948, for entry of plea; and that in default of bail defendant be remanded to the custody of the United States Marshal. [3]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 28th day of May, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

PLEA OF NOT GUILTY

This case came on regularly this day for entry of plea of defendant, Wallace Raymond Shaver, who was present in proper person and with his attorney, James Davis, Esq. E. H. Henes, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon said defendant pleaded "Not Guilty" to the Indict-

ment filed herein against him, which said plea was ordered entered.

With the approval of the Court and the consent of the Government, the defendant waived trial by jury in writing.

After hearing counsel, it is Ordered that this case be continued to June 10, 1948, for trial. (Court.)

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated San Francisco, California, May 28, 1948.

WALLACE R. SHAVER,

Defendant.

JAMES T. DAVIS,

Attorney for Defendant.

E. HUGH HENES,

Assistant United States

Attorney.

Approved:

MICHAEL J. ROCHE,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed May 28, 1948. [5]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 11th day of June, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

MINUTES OF TRIAL

This case came on regularly this day for trial before the Court sitting without a jury, a trial by jury having been heretofore waived. The defendant, Wallace Raymond Shaver, was present with his attorney, James Davis, Esq. Daniel C. Deasy, Esq., Assistant United States Attorney, was present on behalf of the United States. Mr. Davis made a motion to quash the Indictment, which motion, after hearing the arguments of counsel, was ordered denied. R. H. Rundle and Sam Papich were sworn and testified on behalf of the United States. Mr. Deasy introduced in evidence and filed U. S. Exhibits Nos. 1, 2, 3, 4, 6; and offered another exhibit which was marked U. S. Exhibit No. 5 for identification. The United States then rested. Both sides thereupon rested.

Mr. Davis made a motion for judgment of Not Guilty, which motion was ordered denied.

The case was submitted to the Court, and due consideration having been thereon had, it is Ordered that the defendant Wallace Raymond Shaver be, and he is hereby, Adjudged Guilty [6] as charged in the Indictment.

On motion of Mr. Davis, it is Ordered that this case be referred to the Probation Officer for investigation and report.

Ordered case continued to June 18, 1948, for pronouncing of judgment. Ordered that the defendant be remanded to the custody of the United States Marshal pending judgment.

Further ordered that U. S. Exhibit No. 5 for identification may be withdrawn. [7]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 2nd day of July, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Michael J. Roche,
District Judge.

No. 31417-R

UNITED STATES OF AMERICA,

vs.

WALLACE RAYMOND SHAVER

It Is Ordered that the above named defendant be placed on Probation for the Period of Five (5) Years, one of the conditions of his probation be-

ing that defendant make restitution of the amount of money involved herein.

It Is Further Ordered that said defendant be released into custody of Charles H. Upton, Probation Officer of this Court, that defendant report to said Probation Officer as often and in such manner as directed, and further comply with all proper terms and regulations prescribed by said Probation Officer during the probationary period.

It Is Further Ordered that the matter of the pronouncing of judgment be suspended.

J. C. Astredo, Probation Officer, was present.

JAMES DAVIS,

Attorney for Defendant.

DANIEL C. DEASY,

Assistant U. S. Attorney. [8]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Wallace Raymond Shaver, 211 "D" Street, San Rafael, California.

Name and address of Appellant's Attorney: James T. Davis, 1095 Market Street, San Francisco 3, California.

Offense: Violation of Title 18 United States Code, Section 409.

After trial by the Court a verdict was returned finding the defendant guilty on both counts of said indictment on the 11th day of June, 1948.

That thereupon, on the said 11th day of June,

1948, the defendant made a motion for a new trial, which motion was denied, and the Court thereupon referred the defendant to the probation officer and continued the matter of judgment.

That on the 2nd day of July, 1948, the Court made its judgment and sentenced the defendant as follows: Five Years Probation.

That defendant appeals from judgment of conviction and from the order denying his motion for a new trial.

Dated July 7, 1948.

JAMES T. DAVIS,
Attorney for Defendant.

Service of Copy of the foregoing Notice of Appeal admitted this 7th day of July, 1948.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed July 7, 1948.

[Title of District Court and Cause.]

DESIGNATION OF PARTS OF THE RECORD
DESIRED FOR USE IN APPEAL

The appellant designates the following as the Parts of the Record desired for use on appeal:

Indictment.

Plea of Not Guilty.

Reporter's Transcript.

Judgment.

Minutes of the Trial of June 11, 1948.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY UPON
APPEAL:

Appellant intends to rely upon the following points upon appeal:

1. That the evidence was and is insufficient to support the verdict of guilty.
2. That the Court erred in denying appellant's motion to quash indictment.
3. That the Court erred in denying appellant's motion for a judgment of acquittal.

JAMES T. DAVIS,
Attorney for Appellant.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Aug. 4, 1948. [10]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
TRANSCRIPT OF RECORD

Good Cause Appearing Therefor:

It is hereby ordered that the time within which appellant may file the Transcript of Record herein is hereby extended to and including the 27th day of September, 1948.

Dated this 4th day of August, 1948.

MICHAEL J. ROCHE,
Judge of the District Court.

[Endorsed]: Filed Aug. 4, 1948. [11]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
TRANSCRIPT OF RECORD

Good cause appearing therefor:

It is hereby ordered that the time within which appellant may file the Transcript of Record herein is hereby extended to and including the 5th day of October, 1948.

Dated this 20th day of September, 1948.

LOUIS E. GOODMAN,
Judge of the District Court.

[Endorsed]: Filed Sept. 20, 1948.

[12]

District Court of the United States, Northern
District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 12 pages, numbered from 1 to 12, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America, Plaintiff vs. Wallace Raymond Shaver, Defendant, No. 31417-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.20 and that the said amount

has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 1st day of October, A. D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

[13]

In the Southern Division of the United States
District Court for the Northern Division
of California

Before Michael J. Roche, Judge.

No. 31417-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WALLACE RAYMOND SHAVER,

Defendant.

REPORTER'S TRANSCRIPT

Friday, June 11, 1948

Appearances: For the United States: Daniel C. Deasy, Esq., Assistant United States Attorney. For the Defendant: James T. Davis, Esq. [1*]

The Clerk: U. S. vs. Shaver.

Mr. Deasy: Ready for the Government.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

Mr. Davis: Ready, Your Honor.

The Court: Now, how much time do you wish, counsel?

Mr. Davis: I don't think it will take more than half an hour.

Mr. Deasy: I don't think it will.

The Court: Under that statement, I will hold you to half an hour. You may proceed.

Mr. Davis: Thank you, Your Honor. In the first place, I would like to apologize for not being present yesterday.

The Court: Well, I got a report from the Clerk that cleared the matter up, so you needn't apologize to the Court at this time.

Mr. Davis: Thank you, Your Honor.

I wish to make this opening statement, if the Court please: There is no dispute as to the facts in this case whatsoever. However, this indictment is the document which has been returned, is the first one of its kind in this District. It has been brought under an amendment to the Code which was passed in 1946. As far as I know, it has not been passed upon, except in one case in the Southern District of California. As I say, there is no dispute as to the facts. However, I felt that in good conscience, I had to advise my client that in my opinion there is a serious question of law involved, and inasmuch as it [2] is a felony, I have to call to his attention that fact and determine whether or not he should enter a plea of guilty. Now at this moment, for the purposes of the record, I believe I should make a motion to quash the indictment on

the grounds that it does not state a public offense, does not state an offense against the United States of America, on the ground that the section involved reads in part as follows:

“Whoever shall * * * being an employee of any carrier riding in, on or upon any railroad car, motor truck, steamboat, vessel, aircraft, or other vehicle of such carrier transporting passengers or property in interstate or foreign commerce and having in his custody funds arising out of or accruing from such transportation, embezzle or unlawfully convert to his own use any such funds; * * *”

shall be punished as the law provides.

In other words, the point of my objection is this: I believe that that particular amendment which was passed, as I say, in 1946, and the previous one—there are two amendments—I believe were passed for the purpose of controlling actual interstate transportation, or the carriers, while they were actually engaged in the interstate transportation itself.

Now, as Your Honor is well aware, under the old statute prior to these amendments, which is still the law, the property itself has been held to be in interstate commerce from the time [3] it leaves the hands of the consignor until it arrives in the hands of the consignee. That is the property itself. However, I believe that these amendments are distinguished as to property, I believe that they specifically cover only the carrier itself, when the carrier is moving in interstate commerce. In other

words, there is one case, *Stone vs. the United States*, in 153 Fed. 2d 331, which controls amendment No. 4; and in that case the facts were that the defendants were dining car stewards who, while a train which was itself moving in interstate commerce, defrauded the railroad company of meal checks by a trick and device with service men, whereby they could cancel one check and not turn the other one in.

Now, frankly, I don't know about this second section, Section 5—the second amendment—which, as I say, reads as follows:

“Whoever shall * * * being an employee of any carrier riding in, on or upon any railroad car, motor truck, steamboat, vessel, aircraft, or other vehicle of such carrier transporting passengers or property in interstate or foreign commerce and having in his custody funds arising out of or accruing from such transportation, embezzle or unlawfully convert to his own use any such funds; * * *”

shall be punished as the law provides. Now, I think as the facts will indicate, Your Honor, this man was a driver for the American Railway Express. His truck, I believe, admittedly did [4] not leave the city and county of San Francisco. He handled local freight, interstate freight and intrastate freight. There is no doubt about it. There is no question, and the man so admits, that on two counts, the facts upon which the two counts of the indictment are based, that he did have on his truck two shipments of interstate freight and that he de-

livered those to the consignees and collected the money, the C.O.D. and freight charges, and did not turn it in to the Company.

However, Your Honor, I am not satisfied—although I admit those facts—that he has violated the law or that his actions constitute an offense against the United States. That is why I raise the point.

The Court: Very well. I will hear from the Government.

Mr. Deasy: As Mr. Davis has advised Your Honor, this indictment is based upon the 1946 amendment to the statute, which added two new portions, enlarging the classes of acts made criminal by the statute. They added Section 4, which makes it an offense to:

“* * * embezzle, steal or unlawfully take by any fraudulent device, scheme or game, from any railroad car, motor truck, steamboat, vessel, aircraft, or other vehicle operated by any carrier, or from any passenger or employee thereon, when such railroad car or the train of which it is a part, motor truck, steamboat, vessel, aircraft, or other vehicle is moving in interstate or foreign commerce, any [5] money, baggage, goods, or property, with intent to convert the same or any part thereof to his own use, or shall buy, receive, or have in his possession any such money, baggage, goods or property, * * *”

Section 5, the one under which this indictment in this case is laid, reads:

“Whoever shall * * * being an employee of any carrier riding in, on or upon any railroad car, motor truck, steamboat, vessel, aircraft or other vehicle of such carrier transporting such passengers or property in interstate or foreign commerce and having in his custody funds arising out of or accruing from such transportation, embezzle or unlawfully convert to his own use any such funds; * * *”

Now, the Government's position is that the wording of the statute does not limit the cases to those where the truck itself actually moved from state to state, but that it applies to any employee “of any carrier riding in * * * any * * * motor truck * * * transporting * * * property in interstate or foreign commerce and having in his custody funds arising out of * * * such transportation,” which is the case here.

As I view it, the American Railway Express Agency is a carrier in the sense that it picks up and ships, forwards and delivers freight both interstate and intrastate. The shipments involved here came, one of them, from Omaha, Nebraska and the [6] other from LaGrange, Illinois. Both of them were subject to having charges collected upon delivery. The defendant in the case was, as is stated in the indictment, an employee of the Railway Express Agency, and while riding on their truck belonging to the Railway Express Agency, driving the truck, embezzled and converted to his own use funds arising from the transportation. By that I mean funds the collection of which had

been effected by him from the consignees of the goods which had come from, in one case, Omaha, and in the other, LaGrange, Illinois.

Mr. Davis's point is simply this: Does the statute require that the motor truck should actually move, physically move, the goods from one state to another, or, in other words, does it cover such a situation as is charged in the indictment in this case, where the goods were brought in and then placed upon the truck in San Francisco for ultimate completion of the delivery? I feel that the statute covers the situation we have charged in the indictment in this case. It isn't necessary under the statute that the motor truck on which defendant was riding at the time of this embezzlement should be a truck that actually, physically perhaps, transported the goods from some other state into California. It merely completes the shipment. As Your Honor knows, in these interstate shipments they go through many hands between the consignor and the consignee. That was the case here. The goods were picked up by the [7] Railway Express Agency at the point of shipment and were transported by means of railroad cars or otherwise into California, where the ultimate completion of delivery was to be made by the motor truck on which this defendant was the driver. I feel that it is covered by the statute, that the indictment charges the offense under the statute properly.

The Court: It is my thought that the law as amended covers the factual situation in this case. However, I want you to save, for the purpose of

the record, any legal point that you desire to raise hereafter.

Mr. Davis: Yes, Your Honor.

The Court: You want to develop the factual situation now?

Mr. Davis: Yes. Then the motion to quash is denied?

The Court: The motion to quash will have to be denied. Call your first witness.

Mr. Deasy: Mr. Rundle.

R. H. RUNDLE

called as a witness on behalf of the United States, sworn.

The Clerk: Q. Will you state your name?

A. R. H. Rundle.

Direct Examination

Mr. Deasy: Q. What is your occupation, Mr. Rundle?

A. Special agent, Railway Express Agency.

Q. Did you bring with you to court this morning certain [8] documents pertaining to a shipment from Omaha, Nebraska to California, during the month of October of 1947, and the documents pertaining to a shipment from LaGrange, Illinois, to San Francisco during the month of September of 1947?

A. Yes, I have those documents here.

Q. May I see them, please?

A. You want me to explain them to you?

Q. Let me have them first.

The Court: You are familiar with these documents, counsel?

(Testimony of R. H. Rundle.)

Mr. Davis: No, I haven't seen them.

Mr. Deasy: I don't know whether you have seen them; those are the receipts.

Mr. Deasy: Q. Now, Mr. Rundle, I will show you these documents that you have handed me. What is this first one I am showing you here?

A. That is the customer's receipt, back in Omaha, that we issue when we pick up the shipment or when the shipment first comes into our possession. We issue this receipt with a contract attached showing that we will deliver this shipment as addressed in San Francisco.

Q. And from whom did you obtain that?

A. From Cornelia Erdman, Bekins Van & Storage Company.

The Court: In the interest of time, show him the other documents. [9]

Mr. Deasy: Yes, Your Honor.

Mr. Deasy: Q. And this is a similar one on another shipment, is it?

A. That is the same, a receipt issued at La-Grange, Illinois, to Mrs. Israel Smith, declaring that we will deliver that shipment in San Francisco.

Q. And what are these other two documents that you have shown me here?

A. These are receipts issued by the driver upon delivery of these shipments, signed with his initials, and indicated that the money is collected and how much.

Mr. Deasy: Now, the first document handed to me shows—

(Testimony of R. H. Rundle.)

The Court: The witness on the stand probably will recite that better, counsel; he is familiar with them.

Mr. Deasy: I just wanted to state to Your Honor that it shows the destination office as San Francisco, California, the consignee as Cornelia Erdman, c/o Bekins Van & Storage, at 13th and Mission Street. The name of the forwarding office is Omaha, Nebraska, and the name of the shipper is also Cornelia Erdman, the street address being Bekins Van & Storage, 16th and Leavenworth; it covers seven pieces of H. H. goods. This is a receipt numbered 4844.

The Court: Very well.

Mr. Deasy: I ask that be marked.

The Court: It may be admitted and marked. Any objection? [10]

Mr. Davis: No objection.

The Clerk: No. 1.

(Railway Express Agency receipt No. 4844, referred to above, was thereupon received in evidence and marked United States Exhibit No. 1.)

Mr. Deasy: And I have a similar document, which is marked as receipt No. 2025, showing the destination office as San Francisco, California, the consignee as Mrs. Israel Smith, 9 Castle Manor. LaGrange, Illinois; the name of the forwarding office is LaGrange, Illinois, the name of the shipper is the Jackson Storage & Van Company, and the shipping consists of one box hair dryer, and ask that that be admitted also.

(Testimony of R. H. Rundle.)

The Court: It may be admitted next in order.

The Clerk: No. 2.

(Railway Express receipt No. 2025 was thereupon received in evidence and marked United States Exhibit No. 2.)

Mr. Deasy: The next document is a document entitled "Receipt for Charges collected from Consignee, San Francisco, Calif.," dated—it appears to be 10/3/194... It is made out to Bekins in pencil and in ink to Cornelia Erdman, showing the shipper as being "Do318/15," the address as Omaha, Nebraska. It is marked "Paid," with the initials "W.R.S.," showing the total amount of \$73.29.

The Court: It may be admitted and marked.

The Clerk: No. 3. [11]

(Railway Express receipt referred to was thereupon received in evidence and marked United States Exhibit No. 3.)

Mr. Deasy: The next document is a document marked "Consignee's Receipt for Charges," made out "To Destination Office, San Francisco, Calif., Consignee, Mrs. Israel Smith, 90 Castle Manor Avenue," with the name of the forwarding office as LaGrange, Illinois. The shipper is shown as Jackson Storage & Van Company. It is marked "Paid, W.R.S.," showing a total amount of \$18.25. and this is dated "8-27—"—and I can't read the rest. It is "8-2," and something that looks like "74."

The Court: It may be admitted next in order.

The Clerk: No. 4.

(Testimony of R. H. Rundle.)

(Railway Express receipt referred to was thereupon received in evidence and marked United States Exhibit No. 4.)

Mr. Deasy: Q. Now the last two documents that you handed me, Government's Exhibits No. 3 and 4, the two receipts, did you at any time exhibit those to the defendant Shaver in this case?

A. Yes, I have.

The Court: Q. Where and under what circumstances?

A. Well, we took a statement from him in our office, my office at Pier 14.

Q. When? Fix the time.

A. April 7—no, April the 8th. [12]

Q. What time of the day was it?

A. Well, it was approximately—we had been there all day. It was approximately 10:00 o'clock in the morning, I would say.

Q. Who was present?

A. Special agent E. W. Hogan and myself.

Q. State what occurred.

A. And the defendant.

Q. State what occurred.

A. Well, we brought Mr. Shaver in to question him about this here case, and finally Mr. Shaver admitted it, and we took a statement from him to this effect on that date.

Q. Have you got that statement?

A. Yes, I have.

The Court: Have you seen this statement, counsel?

(Testimony of R. H. Rundle.)

Mr. Davis: No, I haven't.

Mr. Deasy: I haven't seen it either, Your Honor.

The Court: You may examine it.

Mr. Deasy: A later statement, I might advise the Court, was taken by Mr. Patrick of the FBI, which I intended to bring out.

The Court: Is he here?

The Witness: Yes, sir.

The Court: Very well.

Mr. Deasy: At this time I was simply questioning this witness as to whether he had at any date exhibited these two [13] documents to Mr. Shaver.

The Court: You may ask him.

Mr. Davis: I have seen the statement of the FBI agent, Your Honor, but not this statement.

Mr. Deasy: I haven't seen it myself; it is rather lengthy, Your Honor.

The Witness: I think it is eight or nine pages.

The Court: Mark it for purposes of identification, if there is any question about it.

Mr. Davis: I have no objection to it being marked for identification.

The Court: It may be admitted and marked for purposes of identification.

Mr. Deasy: This is a portion of the witness' files. There is another whole file. Will you take this—

The Court: Well, you can leave it on. Maybe there will be no necessity for it. Just leave it on there.

(Testimony of R. H. Rundle.)

The Clerk: No. 5 for identification.

(Statement of defendant referred to was thereupon marked United States Exhibit No. 5 for identification.)

Mr. Deasy: Q. Now, did you on the occasion just referred to exhibit these two documents, Government's Exhibits No. 3 and 4 to Mr. Shaver?

A. That is the last two documents you are speaking of?

Q. These are the two. [14]

A. The two consignee receipts? What was your question?

Q. Did you on that date show these to Mr. Shaver? A. Yes.

Q. And did you question him concerning the handwriting or initials appearing on these documents?

A. That's right. He admitted they were his initials.

Q. His initials, "W.R.S."?

A. That's right.

Q. Did he tell you whether or not he had marked them "Paid"?

A. He admitted that he collected the money and did not turn it in, if that is what you mean.

Q. And he told you that the writing "Paid, W.R.S." was written on there by him, is that right? A. Yes.

Q. What was Mr. Shaver's employment at that time? A. He was a driver.

Q. A truck driver? A. Truck driver.

(Testimony of R. H. Rundle.)

Q. For the American Railway Express Agency?

A. That's correct.

Mr. Deasy: No further questions.

The Court: You may take the witness, counsel.

Cross Examination

Mr. Davis: Q. Mr. Rundle, the defendant, Mr. Shaver, is an employee of the Railway Express Agency, is that correct? [15] A. He was.

Q. He was? A. Yes.

Q. And on the date named in the indictment he was an employee, is that correct?

A. No, I believe when he was indicted, I believe—it is in the file there when we took his resignation. I believe he resigned on the 8th of April; I am not too sure to that. I would have to refer to my file.

Q. You probably didn't understand my question, Mr. Rundle. On the 30th day of October, 1947, was he an employee of the Railway Express?

A. That's right, he was an employee.

Q. And on the 4th day of September 1947 was he an employee? A. Yes, he was.

Q. Now, the Railway Express Agency is in the business of transporting freight, is that correct?

A. That's correct, and express.

Q. And Mr. Shaver, I take it, was, on those two dates one of your truck drivers, is that correct? A. That's correct.

Q. What was his route in driving his truck?

A. He had what we would call a "special route," south of Market Street; in other words, he

(Testimony of R. H. Rundle.)

would cover from the Embarcadero all the way to the Beach. [16]

Q. Confined to the City and County of San Francisco? A. That's right.

Q. He never drove his truck outside of the City and County of San Francisco, is that correct?

A. I am not too sure about that; I can't answer that question. He may have went to San Rafael on occasion, and he might have went to San Pablo on occasion.

Q. Well, in any event, he didn't drive his truck outside of the State of California?

A. No, he did not.

Q. And on his truck, what types of freight did he handle? If I may explain that, rather than a description, please state whether he handled interstate, intrastate or local freight, or what.

A. He went out with both kinds. He would have interstate and intrastate.

Q. Any local freight? A. He could have.

Q. Could have?

A. Very little. We have been having very little of that.

Q. And he drove from the railroad yards usually to the various consignees, is that correct?

A. That's right.

Q. And made individual deliveries? [17]

Mr. Davis: That is all.

Redirect Examination

Mr. Deasy: Q. Do you know, Mr. Rundle, how and by what means the shipments covered by these

(Testimony of R. H. Rundle.)

documents which you have produced arrived at San Francisco?

A. By train or—to San Francisco?

Q. Correct.

A. They arrived at Oakland Pier by train and ferried across on the boat to our Pier 14, San Francisco.

Q. In other words, they came in from Omaha and LaGrange, respectively, by railroad train?

A. That's right.

Q. And the terminus is at Oakland; that is the terminus of the trains, at Oakland, and it is then loaded onto the ferryboat to be brought to San Francisco?

A. That's right.

Q. And you took possession, then, in San Francisco, is that right?

A. That's right.

Q. And they were there loaded on trucks to be delivered to the consignees?

A. And they were sorted on our platform and divided into different groups of the city, and Mr. Shaver, of course, had his own particular route, a section of the city, and he would load his own trucks. [18]

Q. Now, calling your attention to Government's Exhibit No. 3, can you explain whether this called for the collection of some funds by the driver in connection with that shipment, is that right?

A. That's correct.

Q. And those charges are enumerated on the document here, is that true?

A. That's right.

(Testimony of R. H. Rundle.)

Q. And they cover value charges of 90 cents, express charges of \$63.25, tax of \$1.92, that is totaled at \$66.07; C.O.D. charges of \$6.94, C.O.D. service charge of 28 cents, to make a grand total of \$73.29, is that correct? A. That's right.

Q. Was the amount to be collected by the driver, and does this document purport to show that it has been collected? Is that right?

A. That is correct.

Q. Now, calling your attention to Government's Exhibit No. 4, this shows, does it, the amount of charges to be collected by the driver in this receipt?

A. Yes, it does.

Q. And they call for express charges of \$11.73, tax of 35 cents, to make a total of \$12.07; added are C.O.D. charges of \$5.90, C.O.D. service charges of 28 cents, to make a grand total of \$18.25, is that right? [19] A. That's correct.

Q. And this receipt purports to show that it has been collected by the driver?

A. That's correct.

Mr. Deasy: No further questions.

Recross Examination

Mr. Davis: Q. Mr. Rundle, you are familiar with the records kept in the regular course of business of the Railway Express Agency, are you not?

A. Yes, I am.

Q. And from examining Government's Exhibits 1, 2, 3 and 4, can you state from those records that these two deliveries came from the towns in question. Omaha and LaGrange?

(Testimony of R. H. Rundle.)

A. Yes; you see, in order for the defendant to write that receipt, he would have to have a delivery sheet, and on that delivery sheet is the same number that is on this folding receipt, so if you will notice on these exhibits here, you will see that the delivery receipt on this one, No. 4844, shows on this original receipt that I have obtained from Omaha, which we issued at Omaha, and it carries that same number.

Q. I see. In other words, when you testify that these two deliveries arrived here by train into Oakland and then were ferried across the Bay, are you testifying of your own knowledge or from these documents that you have looked at?

A. Well, from the documents, of course. I haven't seen the [20] shipments.

Mr. Davis: I have no further questions.

The Court: Step down.

Call your next witness.

SAM PAPICH

called as a witness on behalf of the Government,
sworn.

The Clerk: Q. Will you state your name?

A. Sam Papich.

Direct Examination

Mr. Deasy: Q. And your occupation, Mr. Papich?

A. I am a special agent of the FBI.

Q. Do you know the defendant in this case, Mr. Wallace Raymond Shaver? A. I do, sir.

(Testimony of Sam Papich.)

Q. And did you ever have a conversation with him concerning the matters which are charged in this indictment?

A. I had a conversation with him on April 14, 1948, in his apartment on 101 Parnassus Avenue.

Q. And were any other persons present at that time?

A. A roommate, Clifford Piltz, was also present. That was about 10:00 o'clock in the morning.

Q. And at that time did you identify yourself to Mr. Shaver as an FBI agent?

A. I did, sir. [21]

Q. And what else, if anything, did you tell him at that time?

A. I advised Mr. Shaver that I wanted to question him regarding the matter of some shipments which he handled for the Railway Express Agency, and advised him that he had the right to legal counsel before making any statements. I also advised him that anything he might say would be held against him in a court of law. He subsequently furnished a voluntary statement to me.

Q. You had a conversation with him at that time, did you? A. Yes, sir.

Q. And from that conversation you prepared a written statement, did you? A. I did, sir.

Q. And did you exhibit that statement to Mr. Shaver? A. I did.

Q. And did he read it, do you know?

A. He did read it.

Q. And did you ask him to sign the statement?

A. I did.

(Testimony of Sam Papich.)

Q. And did he do so? A. He did, sir.

Q. Have you that with you?

A. Yes, I have it here, sir.

Mr. Deasy: Did you see this?

Mr. Davis: I saw the printed one, or the typed one. [22]

Mr. Deasy: Q. This statement was signed by Mr. Shaver in your presence, was it?

A. It was, sir.

Q. And in the presence of C. E. Piltz?

A. That's right, sir.

Q. And that is the man you referred to as his roommate? A. That's right.

Mr. Deasy: At this time I would like to offer it in evidence.

The Court: It may be admitted.

The Clerk: No. 6.

(The statement referred to above was received in evidence and marked United States Exhibit No. 6.)

Mr. Deasy: May I read it at this time:

“San Francisco, California. 4/14/48.

“I, Wallace Raymond Shaver, make the following voluntary statement to Sam Papich, who has identified himself to me as being a Special Agent of the Federal Bureau of Investigation. No threats or promises have been made to me. I have been advised that I can have legal counsel before making any statements. I know that anything that I say can be used against me in a court of law.

(Testimony of Sam Papich.)

“I am 39 years of age and a native of California. I have a high school education and I attended a teacher’s college for one and a half years. I have been a truck [23] driver for the Railway Express Agency, San Francisco, for approximately two and a half years. I resigned April 7, 1948. On or about October 30, 1947, I delivered a shipment of seven pieces to the Bekins Van & Storage Co., San Francisco. I received about \$70.00 from Bekins which amount covered express charges, tax, value charges, and C.O.D. return charges. I gave Bekins a receipt and I did not settle this amount with the company. I kept the money for my own use. I recall that on the same day I made the delivery to Bekins I made a delivery of approximately twenty other shipments. I did not make settlements with the Railway Express Agency for the amounts collected on the deliveries. In addition to the \$70.00, I collected from Bekins, I believe I collected approximately \$80.00 from other deliveries, all of this on the same day. I kept this money for my own personal use.

“I recall that in the early part of September 1947, I made several deliveries of shipments in San Francisco. On this particular day I made several collections totalling to approximately \$150.00. I did not make settlements with the Railway Express Agency on these collections. I kept this money for my own personal use. On April 8, 1948, Special Agent E. W. Hogan of the Railway Express Agency showed me a receipt issued to a Mrs. Israel Smith. No. 9 Castle Manor, San Francisco, for a

(Testimony of Sam Papich.)

delivery of a shipment [24] from LaGrange, Illinois. I recognized my initials on this receipt indicating that I made the delivery and collected the charges. I believe it is one of the deliveries I made on the day in early September when I kept approximately \$150.00.

“I also recall that in early September, 1947, I made a delivery to a Mrs. Gordon on Aptos Way, San Francisco. I collected \$30.00 or \$40.00 on this delivery and I did not make a settlement with the Railway Express Agency. I kept the money for my own use.

“I wish to add that Special Agent E. W. Hogan showed me a receipt covering the delivery to Bekins Van & Storage Co. This receipt showed that shipment originated in Omaha, Nebraska. I recognized my initials on this receipt. These initials would have been made at the time of the collection for the delivery.

“At this time I wish to state that there is a possibility there may have (been) other instances when I made deliveries and kept the collections for my own use, but to my knowledge at present time, there were not any instances other than described above.

“I have read the above statement of two pages including this page and everything is true as well as I can recall.

“Wallace R. Shaver.

[25]

(Testimony of Sam Papich.)

“Witnesses:

“Clifford E. Piltz,
101 Parnassus, San Francisco.

“Sam Papich.
F.B.I., San Francisco.

4/13/48.”

Mr. Deasy: I have no further questions.

Cross Examination

Mr. Davis: Q. Mr. Papich, when you questioned Mr. Shaver, do you know whether any of these other transactions that he described were interstate shipments? Have you been able to trace any of these?

A. No, I have’nt, sir.

Q. So that out of the group that he described, the only two that you know of as being interstate are the two named in the indictment, is that correct? A. That’s right, sir.

Mr. Davis: That is all, sir.

The Court: Step down.

Mr. Deasy: We rest, Your Honor.

Mr. Davis: I have no witnesses, Your Honor, and I now wish to make a motion for a directed verdict of a judgment on the pleadings upon the same grounds that I made my motion to quash the indictment. In other words, Your Honor, I feel that under the previous law the Courts were very careful to distinguish or to point out that the goods stolen had to be stolen from some one of the specific places named in the indictment, [26] such as a wharf, a railroad car, a truck, and so forth. In

other words, it is jurisdictional as to whether or not the Federal Government has any control over this property unless it is actually moving in interstate commerce.

Now, my feeling is that if we are going to accept these amendments as extending the law to the facts as we hear them in this case, it is going to mean that the Federal Government has jurisdiction over practically every truck, streetcar or any other vehicle moving in a locality if it merely happens to handle a piece of interstate freight. In other words, I don't believe that the analogy would be strained to say that if a man got on a municipal railway car with a package of interstate freight to take it out to be delivered, that would in effect make the municipal railway streetcar an interstate carrier; and I don't think that Congress intended to go that far.

The Court: I quite agree with you, but we are here concerned with a man working for the Railway Express, who was engaged in that very activity.

Mr. Davis: That is true, Your Honor. However, they do handle both—they handle local, interstate and intrastate.

My only point is, Your Honor, that I feel in order to bring the case within this statute that the carrier itself has to be transporting passengers or property in interstate freight, and the fact that some property on a peculiarly local carrier happens to be interstate, I don't think brings it within this [27] classification.

The Court: I think the amendment covers it. The motion will have to be denied.

Do you want to submit the case?

Mr. Davis: Yes, sir, we will submit it at this time.

The Court: The Court will have to adjudge the defendant guilty as charged.

Mr. Davis: If the Court please, as you may have understood from me making these technical motions, I feel that in justice to my client, I should take this matter up on appeal. I think it should be decided one way or the other, inasmuch as it is the first case in this District. I would like to move at this time that the defendant be released on bail pending his appeal, because I feel that the defendant has admitted all of the facts. He has not denied any of them. It is really upon my advice that he is taking this technical move, as I feel he is justified to do, because if he is not guilty of this offense, I don't believe that he should have the stigma of having been found guilty or of pleading guilty to a felony charge.

The Court: Very well, I will assist you in any way I can so that there will be a final determination of this matter. What do you wish, to fix a bail on appeal?

Mr. Davis: Yes.

The Court: What is the bail?

Mr. Davis: The defendant is out on a \$500 bail now, Your [28] Honor.

The Court: Is there any objection to bail?

Mr. Deasy: No, Your Honor, there is no objection to continuing on bail.

The Court: He may remain on bail, and it will be fixed at \$500.

Mr. Davis: Thank you, Your Honor.

The Court: Very well.

Mr. Deasy: Do you want at this time to fix a date for judgment, Your Honor?

The Court: What day? What date for judgment?

Mr. Davis: What day do you want?

Mr. Deasy: Any time.

Mr. Davis: Any date is agreeable to me.

The Court: I will have to take the usual course and refer the matter, so that the Court can be properly advised, to the Probation Department for a pre-sentence report. The defendant will have to go into custody.

Mr. Davis: Might I suggest two weeks, Your Honor?

The Court: Very well, two weeks.

Mr. Davis: Your Honor, I thought that Your Honor had granted the motion to release the defendant on bail pending his appeal.

The Court: No, I will have to take the usual course; I had in mind that bail on appeal, but until I receive the pre-sentence [29] report—if it is agreeable to the Government, that thought was limited to bail for the purpose of appeal. Judgment hasn't been imposed yet.

Mr. Davis: I see, Your Honor.

The Court: And the Court wishes to be advised before sentence is imposed.

Mr. Davis: Might I suggest, then, Your Honor,

—I don't like to attempt to tell the Court that I am imposing upon your prerogatives—

The Court: No, we proceed here with a degree of liberty that is surprising at times, if the facts warrant it.

Mr. Davis: What I meant was this, Your Honor: Without trying to impose on the prerogatives of the Court, from the facts in the case, I believe that the defendant will appear to be, after investiagtion, a fit subject for probation. I have checked his background and I understand he has had no previous difficulty and never been in trouble before and that this is his first offense. Therefore I would suggest that if it is possible that the probationary period or the period for investigation be reduced to one week, rather than two weeks.

The Court: Very well, one week. The defendant may go into custody.

The Clerk: June 18.

[Endorsed]: Filed Sept. 22, 1948. [30]

[Endorsed]: No. 11974. United States Court of Appeals for the Ninth Circuit. Wallace Raymond Shaver, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 1, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 11974

WALLACE RAYMOND SHAVER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY AND
DESIGNATION OF PORTIONS OF THE
RECORD FOR THE CONSIDERATION
THEREOF

The Appellant adopts as his Statement of Points on Appeal the Statement of Points appearing in the certified typewritten Transcript of Record.

The Appellant designates for printing the entire certified typewritten Transcript of Record.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

[Endorsed]: Filed October 14, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION THAT PORTIONS OF THE
RECORD NEED NOT BE PRINTED

It Is Hereby Stipulated by and between the Appellant and Respondent, by their respective counsel, that Plaintiff's Exhibits I, II, III and IV need not be printed as part of the Record on Appeal, but may be considered in their original form and in such form may be considered a part of the Record on Appeal.

/s/ FRANK J. HENNESSY,
United States Attorney.

By /s/ DANIEL C. DEASY,
Assistant U. S. Attorney,
Attorneys for Respondent.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

[Endorsed]: Filed October 14, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

**ORDER THAT PORTIONS OF THE RECORD
NEED NOT BE PRINTED**

Good Cause Appearing Therefor and pursuant to the stipulation of the parties hereto, it is hereby ordered that Plaintiff's Exhibits I, II, III and IV need not be printed as part of the Record on Appeal, but may be considered in their original form and in such form shall be considered a part of the Record on Appeal.

/s/ WILLIAM DENMAN,
Chief Judge, United States Court of Appeals for
the Ninth Circuit.

[Endorsed]: Filed October 15, 1948. Paul P.
O'Brien, Clerk.

